

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

<p>NORTHEAST CONTROLS, INC., 3 Enterprise Avenue Clifton Park New York, NY 12065</p> <p>ST. PAUL MERCURY INSURANCE COMPANY 385 Washington Street St. Paul, MN 55102</p> <p>Plaintiffs,</p> <p>v.</p> <p>FISHER CONTROLS INTERNATIONAL, LLC 205 S. Center Street Marshalltown, Iowa 50158</p> <p>Defendant.</p>	<p>NO. 06-412</p> <p><b>REPLY AFFIDAVIT OF DANIEL J. GUNTER IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL DEPOSITIONS OF MICHAEL PETERS AND ALBERT CAPPELLINI (DKT. # 38)</b></p>
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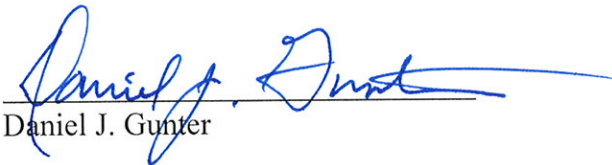
STATE OF WASHINGTON )  
 : ss.  
County of King )

I, DANIEL J. GUNTER, being duly sworn, depose and state as follows:

1. I am one of the attorneys representing defendant Fisher Controls International, LLC ("Fisher"), in the above matter. I am competent to attest as to the matters set forth herein, and I make this affidavit based on my personal knowledge.

2. Attached hereto as Exhibit 12 is a true and correct copy of an email sent by Fisher's counsel to plaintiffs' counsel on August 27, 2007, relating to the scheduling of the

depositions of Messrs. Peters and Cappellini.

  
Daniel J. Gunter

Subscribed and sworn to before me this 13th day of September, 2007.

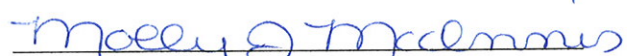
  
Notary Public, State of Washington  
Residing at: Enumclaw, WA  
My commission expires: 9/8/2011



EXHIBIT 12

**Gunter, Dan**

**From:** Gunter, Dan  
**Sent:** Monday, August 27, 2007 1:54 PM  
**To:** 'Wagner, Thomas P.'  
**Cc:** McVey, Patrick; 'Paul A. Bradley'; Shannon, J. Scott  
**Subject:** RE: NEC v. Fisher

Tom--

We prepared the motion when it became apparent that plaintiffs did not intend to engage in a timely discussion of this issue. We provided more than adequate time for plaintiffs to respond. In fact, we agreed to an extension of our first deadline (i.e., end of the day Wednesday, 8/22). When we set a second deadline (end of the day Friday, 8/24), you responded by saying that you would get back to us at your convenience. When we did not hear from you within the reasonable time that we had given, we filed the motion.

In regard to your offer to discuss the issue this week: Given that you have indicated that you do not intend to alter your position, there does not appear to be anything left for us to discuss. Accordingly, it appears that this issue is properly before the Court for resolution.

--Dan

-----Original Message-----

**From:** Wagner, Thomas P. [mailto:TPWagner@MDWCG.com]  
**Sent:** Saturday, August 25, 2007 6:09 AM  
**To:** Gunter, Dan  
**Subject:** NEC v. Fisher

I saw this morning that you filed a motion to compel the Peters and Cappellini depositions at 5:32 p. m. on Friday. I have not yet been able to open or read it. Apparently, you prepared this motion without waiting for the deadline that you unilaterally announced to us. In any event, we discussed this issue at length late yesterday afternoon. We are quite satisfied with the position we have taken. Specifically, we cannot produce NEC personnel for deposition without knowing whether your last-minute counterclaim is in this case. We also feel that you have had ample opportunity to depose Mr. Cappellini. Nevertheless, if you still wish to discuss this issue, I will be in most of next week. Please feel free to call me.

FCI/MOC 0021

9/13/2007